

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ALEJANDRO GARCIA, PRO SE,
TDCJ-CID No. 1498671,

Plaintiff,

V.

NEAL UNIT MEDICAL DEPT., Potter
County, Tex.; MRS. NFN WALLACE,
Medical Administrator; and
DR. NFN BASSE, Neal Unit Doctor,

Defendants.

[illegible]

2:11-CV-0300

ORDER OF DISMISSAL

Plaintiff ALEJANDRO GARCIA, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants, and has been granted permission to proceed *in forma pauperis*.

On January 6, 2012, a Report and Recommendation was issued by the United States Magistrate Judge recommending the instant cause be dismissed without prejudice for failure to state a claim on which relief can be granted.

Plaintiff was instructed he could utilize the response period to amend his pleading to cure his deficient claim(s) or that he could file objections to the Report and Recommendation.

Plaintiff chose to file Objections and did so on January 12, 2012.

By his Objections, plaintiff appears to argue he was deprived of Due Process because of bias or prejudice by the Magistrate Judge. Plaintiff states there has been no Rule 25(f) meeting

and no discovery under Rule 26, Federal Rules of Civil Procedure. Plaintiff asks the Court to schedule an “appearance” to resolve whether plaintiff’s claim is frivolous or malicious and asks for a “pre-conference determination of the facts.”

Plaintiff’s claim has already been reviewed to determine whether it is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. 1915A; 28 U.S.C. 1915(e)(2). Any one of these bases is sufficient to justify dismissal of a lawsuit under Title 28, United States Code, section 1915(e)(2). A *Spears* hearing need not be conducted for every *pro se* complaint. *Wilson v. Barrientos*, 926 F.2d 480, 483 n.4 (5th Cir. 1991). *Cf. Green v. McKaskle*, 788 F.2d 1116, 1120 (5th Cir. 1986) (“Of course, our discussion of *Spears* should not be interpreted to mean that all or even most prisoner claims require or deserve a *Spears* hearing. A district court should be able to dismiss as frivolous a significant number of prisoner suits on the complaint alone or the complaint together with the *Watson* questionnaire.”). Plaintiff is not entitled to hearing prior to dismissal for failure to state a claim on which relief cannot be granted. Moreover, there is no need for a “pre-conference determination of the facts.” The Court accepts the facts pled by plaintiff and analyzes his claim(s) accordingly.

Plaintiff was given an opportunity to cure the deficiencies in his factual pleadings during the response period for the Report and Recommendation, but has failed to do so.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

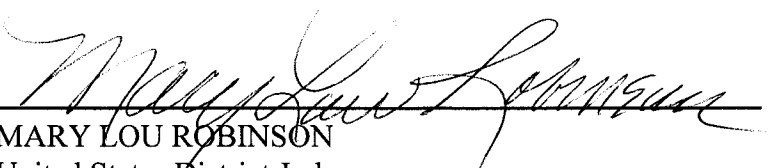
IT IS THEREFORE ORDERED that the Civil Rights Complaint by KRISS RAY CAMP is DISMISSED WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

Signed this the 18th day of January, 2012.


MARY LOU ROBINSON
United States District Judge